

**Effective 5/12/2015**

**11-42-403 Board of equalization -- Hearings -- Corrections to proposed assessment list -- Report to governing body -- Appeal -- Board findings final -- Waiver of objections.**

- (1) After preparing an assessment list under Subsection 11-42-401(2)(a)(i), the governing body shall appoint a board of equalization.
- (2) Each board of equalization under this section shall, at the option of the governing body, consist of:
  - (a) three or more members of the governing body;
  - (b)
    - (i) two members of the governing body; and
    - (ii)
      - (A) a representative of the treasurer's office of the local entity; or
      - (B) a representative of the office of the local entity's engineer or the project engineer; or
  - (c)
    - (i)
      - (A) one member of the governing body; or
      - (B) a representative of the governing body, whether or not a member of the governing body, appointed by the governing body;
    - (ii) a representative of the treasurer's office of the local entity; and
    - (iii) a representative of the office of the local entity's engineer or the project engineer.
- (3)
  - (a) The board of equalization shall hold hearings on at least three consecutive days for at least one hour per day between 9 a.m. and 9 p.m., as specified in the notice under Section 11-42-402.
  - (b) The board of equalization may continue a hearing from time to time to a specific place and a specific hour and day until the board's work is completed.
  - (c) At each hearing, the board of equalization shall hear arguments from any person who claims to be aggrieved, including arguments relating to:
    - (i) the amount of benefits accruing to a tract, block, lot, or parcel of property in the assessment area; or
    - (ii) the amount of the proposed assessment against the tract, block, lot, or parcel.
- (4)
  - (a) After the hearings under Subsection (3) are completed, the board of equalization shall:
    - (i) consider all facts and arguments presented at the hearings; and
    - (ii) make any corrections to the proposed assessment list necessary to ensure that the assessment meets the requirements of Section 11-42-409.
  - (b) A correction under Subsection (4)(a)(ii) may:
    - (i) eliminate one or more pieces of property from the assessment list; or
    - (ii) increase or decrease the amount of the assessment proposed to be levied against a parcel of property.
  - (c)
    - (i) If the board of equalization makes a correction under Subsection (4)(a)(ii) that results in an increase of a proposed assessment, the board shall, before approving a corrected assessment list:
      - (A) give notice as provided in Subsection (4)(c)(ii);
      - (B) hold a hearing at which the owner whose assessment is proposed to be increased may appear and object, in person or in writing, to the proposed increase; and

- (C) after holding a hearing, make any further corrections that the board considers necessary to make the proposed increased assessment meet the requirements of Section 11-42-409.
- (ii) Each notice required under Subsection (4)(c)(i)(A) shall:
  - (A) state:
    - (I) that the property owner's assessment is proposed to be increased;
    - (II) the amount of the proposed increased assessment;
    - (III) that a hearing will be held at which the owner may appear and object to the increase; and
    - (IV) the date, time, and place of the hearing; and
  - (B) be mailed, at least 15 days before the date of the hearing, to each owner of property as to which the assessment is proposed to be increased at the property owner's mailing address.
- (5)
  - (a) After the board of equalization has held all hearings required by this section and has made all corrections the board considers necessary to comply with Section 11-42-409, the board shall report to the governing body its findings that:
    - (i) each assessed property within the assessment area will be assessed in a manner that meets the requirements of Section 11-42-409; and
    - (ii) except as provided in Subsection 11-42-409(5), no parcel of property on the assessment list will bear more than its equitable portion of the actual costs that are reasonable of the improvements benefitting the property in accordance with Section 11-42-409.
  - (b) The board of equalization shall, within 10 days after submitting its report to the governing body, mail a copy of the board's final report to each property owner who objected at the board hearings to the assessment proposed to be levied against the property owner's property at the property owner's mailing address.
- (6)
  - (a) If a board of equalization includes members other than the governing body of the local entity, a property owner may appeal a decision of the board to the governing body by filing with the governing body a written notice of appeal within 15 days after the board's final report is mailed to property owners under Subsection (5)(b).
  - (b) Except as provided in Subsection (6)(a), no appeal may be taken from the findings of a board of equalization.
- (7) The findings of a board of equalization are final:
  - (a) when approved by the governing body, if no appeal is allowed under Subsection (6); or
  - (b) after the time for appeal under Subsection (6) is passed, if an appeal is allowed under that subsection.
- (8)
  - (a) If a governing body has levied an assessment to pay operation and maintenance costs within an assessment area, the governing body may periodically appoint a new board of equalization to review assessments for operation and maintenance costs.
  - (b) Each board of equalization appointed under Subsection (8)(a) shall comply with the requirements of Subsections (3) through (6).
- (9)
  - (a) An owner who fails to make an objection setting forth all claims, in accordance with Subsection (9)(b), to the board of equalization waives all objections, except as provided in Subsection (10), to the levy.
  - (b) An owner may set forth a claim and object to a levy by:
    - (i) appearing before the board of equalization in person or through a designated agent; or

- (ii) submitting the objection in writing if the objection is received by the board of equalization before:
    - (A) the first hearing as described in Subsection (3)(a); or
    - (B) if applicable to the owner, a subsequent hearing described in Subsection (4)(c)(i)(B).
- (10) The provisions of Subsection (9)(a) do not prohibit an owner's objection that the governing body failed to obtain jurisdiction to order that the improvements which the assessment is intended to pay be provided to the assessment area.
- (11)
  - (a) This section may not be interpreted to insulate a local entity from a claim of misuse of assessment funds.
  - (b)
    - (i) Except as provided in Subsection (11)(b)(ii), an action in the nature of mandamus is the sole form of relief available to a party challenging the misuse of assessment funds.
    - (ii) The limitation in Subsection (11)(b)(i) does not prohibit the filing of criminal charges against or the prosecution of a party for the misuse of assessment funds.

Amended by Chapter 396, 2015 General Session